



January 2, 2002

Ms. Kimberley Mickelson  
Olson & Olson  
333 Clay Street, Suite 3485  
Houston, Texas 77002

OR2001-0023

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156760.

The City of Friendswood (the "city"), which you represent, received a request for a copy of a specified CAD report. You claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 58.005 of the Family Code.<sup>1</sup> Section 58.005 provides:

(a) Information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court may be disclosed only to:

(1) the professional staff or consultants of the agency or institution;

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

- (2) the judge, probation officers, and professional staff or consultants of the juvenile court;
- (3) an attorney for the child;
- (4) a governmental agency if the disclosure is required or authorized by law;
- (5) a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the protection of the disclosed information;
- (6) the Texas Department of Criminal Justice and the Texas Juvenile Probation Commission for the purpose of maintaining statistical records of recidivism and for diagnosis and classification; or
- (7) with leave of the juvenile court, any other person, agency, or institution having a legitimate interest in the proceeding or in the work of the court.

You do not explain, nor can we ascertain from our review of the submitted information, how this information constitutes information obtained for the purpose of diagnosis, examination, evaluation, or treatment or for making a referral for treatment of a child by a public or private agency or institution providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court. Accordingly, we cannot conclude that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 58.005 of the Family Code.

You also claim that the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with section 58.007 of the Family Code. Section 58.007 provides that juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. Section 58.007 states in pertinent part:

- (c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). A "child" is defined in the Family Code as a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Based on our review of the submitted information, we are unable to determine whether the juvenile involved in this matter is ten years of age or older and under seventeen years of age. Therefore, we cannot find that the submitted information concerns juvenile conduct that is encompassed by section 58.007. Accordingly, we conclude that the submitted information is not excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

You also claim that the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted . . . if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that *did* not result in conviction or deferred adjudication;

. . . .

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted . . . if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that *did* not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a),(b) (emphasis added). Generally, a governmental body claiming section 552.108 as an exception to disclosure must reasonably explain, if the information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the complaint in this matter “has not resulted in a conviction or deferred adjudication.” It appears from this statement that the incident in question is still pending. However, you also state that “no incident report [was] generated as a result of this call” and that, thus, “this incident did not result in a conviction or deferred adjudication.” We, therefore, understand you to argue that this case has concluded in a final result other than conviction or deferred adjudication. Based on our review of your representations and the submitted information, we conclude that you have met your burden of demonstrating the applicability of section 552.108(b)(2) in this instance. Accordingly, we conclude that the city may withhold the submitted information from disclosure pursuant to section 552.108(b)(2) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 156760

Enc. Submitted documents

cc: Ms. Karen Kittinger  
207 Timber Lane  
Highlands, Texas 77562  
(w/o enclosures)